



CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

**HUNTER REGION SPORTS CENTRE
45 STOCKLAND DRIVE, GLENDALE NSW 2285**

CLAUSE 4.3 HEIGHT OF BUILDINGS

**Prepared on behalf of:
LAKE MACQUARIE CITY COUNCIL C/- EJE ARCHITECTURE**

**Prepared for submission to:
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1. INTRODUCTION

This submission seeks a variation to *Clause 4.3* of the *Lake Macquarie Local Environmental Plan 2014* (LM LEP 2012), which prescribes a maximum building height of 13 metres (m) to the subject site.

This submission has been prepared with regards to a development application for the proposed expansion of the Hunter Region Sports Centre (HRSC) upon the premise known as 45 Stockland Drive, Glendale (Lot 32 DP883898) (the site).

As detailed in this request, the proposed development is considered to meet the requirements prescribed under *Clause 4.6* of the LM LEP 2014, as the development standard is considered unreasonable and the development displays sufficient environmental planning grounds to warrant contravention of the development standard.

Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - i. *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone*



RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. *When this Plan was made it did not include all of these zones.*

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4*
 - (d) clause 2.8, 6.1 or 6.2*

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority should be satisfied that all requirements of the Clause have been suitably addressed via the content in this formal request.

Clause 4.6 Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

"4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard."

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

The Environmental Planning Instrument to which these variations relate to is the *Lake Macquarie Local Environmental Plan 2014*. The development standard to which this variation relates to is *Clause 4.3 Height of Buildings*, which reads as follows:

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure the height of buildings are appropriate for their location,
- (b) to permit building heights that encourage high quality urban form.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

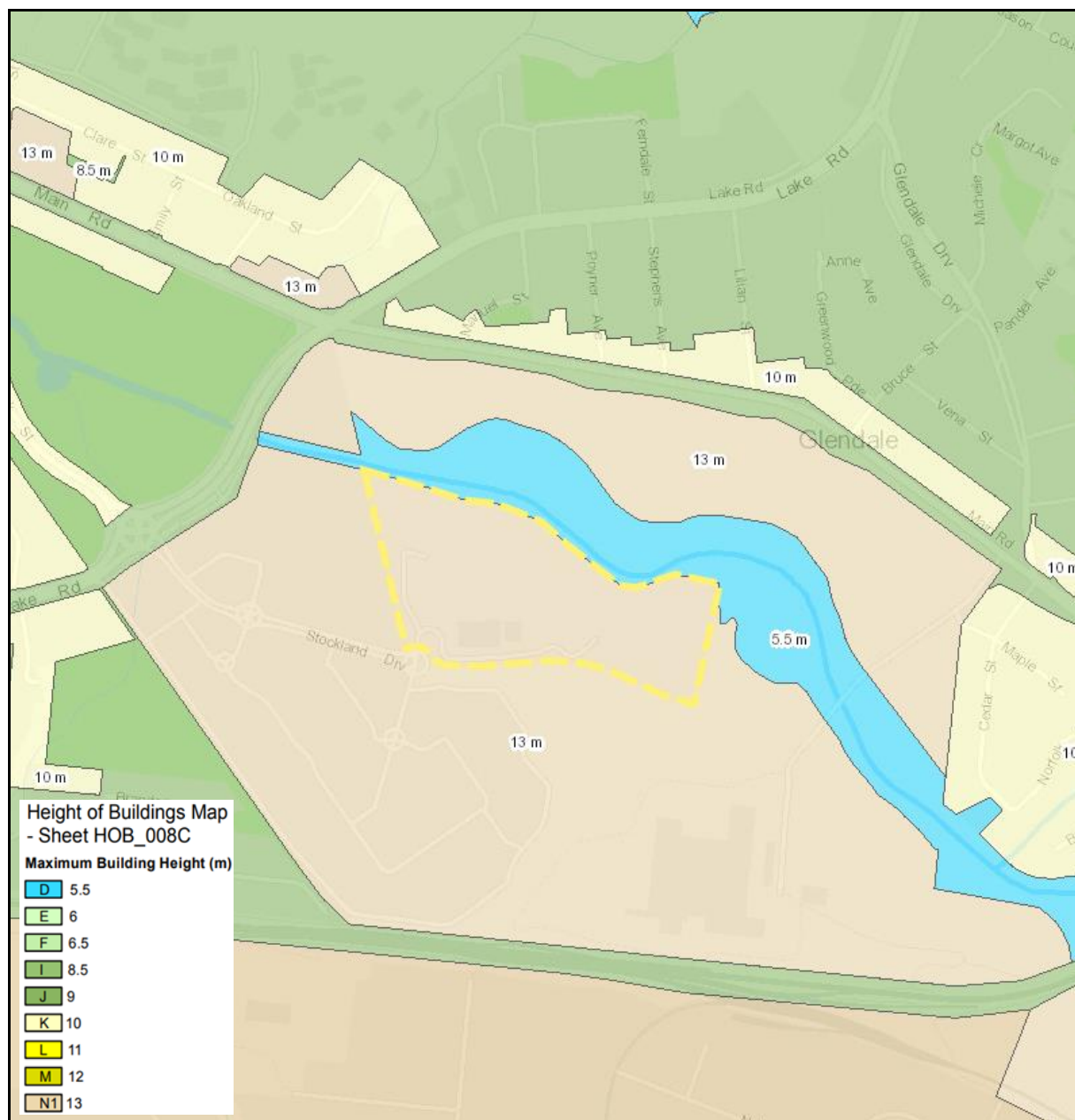


Figure 1-1: Height of Buildings Map. Source: NSW Planning Portal

A maximum building height of 13m applies to the subject site, as per Figure 1-1 above.

Written justification for the proposed variation to the height of buildings development standard in accordance with Clause 4.6 of the Lake Macquarie LEP 2014 is required.

2. EXTENT OF VARIATION

As noted above, Clause 4.3 of the Lake Macquarie Local Environmental Plan 2014 states that the land is subject to a maximum building height of 13m.

Referring to the architectural plans incorporated into the DA package, prepared by EJE Architecture (Revision DA RFI), there are two (2) separate departures to the development standard; the Trampoline Centre and the Community Centre. It is noted that the Trampoline Centre has a maximum building height above existing ground level displayed as 13.745 meters (m), being a 0.745m (5.7%) exceedance to the development standard. The proposed Community Centre displays a maximum building height above ground level of 13.215m, being a 0.215m (1.7%) exceedance to the development standard.

We submit that the variation to the standard is minor, being less than 10%. The proposal seeks to provide a high quality, purpose built community development which displays strong adherence to industry standards, existing built form and design constraints.

This trampoline center height exceedance is limited to a small portion and is attributed to necessitating compliance with international standards for trampoline gymnastics. Federation Internationale de Gymnastique (FIG) Apparatus Norms require that the minimum ceiling height for trampoline gymnastics from the floor to the lowest point or fixture (fans in this case) on the ceiling is 12 metres. In order to achieve compliance with international standards, a minor increase in overall building height is required in this instance.

The second, smaller height exceedance is noted at the eastern end of the complex, and relates to the outermost portion of the roof form (eaves overhang). DA-203 (Elevation 2) indicates the existing Sports Centre considerably exceeds the 13m height. The proposed Community Centre has been designed to increase continuity between the existing and proposed buildings, displaying a curved roof design sympathetic to the existing Sports Centre. This is in accordance with Council's advice as stated in the Pre-Lodgement Meeting Minutes (Council reference: PL/36/2018.) In order to achieve this complimentary architectural design, a small breach of the maximum building height is required in this instance. It should be noted that the extent of the non-compliance is minor, with the Community Centre being predominantly contained within the maximum height and the curved roof gradually receding in height significantly below the 13m height limit.

DA-004 Height Study depicts the full extent of the height exceedances of the proposed buildings. This plan illustrates both departures and provides context to the overall impact of the height exceedances, which is not significantly detrimental to the overall development/site.

It is worth noting that the intended architectural outcomes for the Hunter Regional Sports Centre expansion include the development of buildings to provide for continuity in form, roof form and materials to distinguish the buildings as a complex within the broader precinct. It is considered that the proposed development achieves the intended outcomes for the site as per the above.

When viewed from the streetscape, the new buildings will not create a bulk and scale that is disproportionate to the existing built form at the site, with a historical departure to the development standards noted by the existing Sports Centre. The development has considered its relationship with the streetscape – this can be attributed to the placement of built form; the height exceedances are exclusive to the north side of the complex and are limited to the upper and outermost portion of the roof and eaves. In addition, the buildings provide substantial articulation and architectural treatment viewable from the Stockland Drive frontage, providing connection to and visual interest from the public domain.

It should be noted that in addition to the retention of existing mature vegetation along the western boundary, additional significant landscaping treatments will be provided opposite the frontage, around the parking areas and nearby Child Care Centre. Landscaping will provide a sympathetic contrast between the natural and built environment when viewed from the south/southwest. In addition, the land immediately adjoining to the north/northeast is zoned E2 Environmental Conservation, comprises *Winding Creek*, and is highly unlikely to be developed. Therefore, any impact with respect to the visibility of the complex and loss of amenity to the land at the rear of site is negligible.

An alternative design would require substantial re working and would fundamentally lack the ability to achieve the contemporary and cohesive level of amenity that is afforded by the current design. It should be noted that no



reasonable amendment to the trampoline center would provide compliance with both the building height development standards and FIG Apparatus Norms. The proposed design thereby provides the most favorable architectural and practical outcome for the site and users.

It is our submission that the breach will not impact on the amenity of the existing development or adjoining development, nor will the variation compromise the character of the area – which, notwithstanding the bushland north and east of the site, comprises large scale commercial development consistent in scale and form to that of the proposed development. As such, a degree of flexibility is considered reasonable in this instance and anticipated under the LEP where justification is made.

3. IS COMPLIANCE UNREASONABLE OR UNNECESSARY?

With reference to Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, is to demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance.

The proposed variation from the development standard is assessed against the accepted “5 Part Test” for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827. In the matter, the Commissioner stated within the judgement the following, in reference to a variation:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

It is therefore our submission that the *Wehbe* test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

First – The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

Second – A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Third – A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Fourth – A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Fifth – A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.”

The following discussion is provided in response to each of the above:

3.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives supporting the height of buildings control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental planning impacts, would demonstrate that strict compliance with Clause 4.3 would be unreasonable in this instance.

The development as proposed will be in the public interest as it is consistent with the objectives of the development standard (being Clause 4.3), which are as follows:

(1) *The objectives of this clause are as follows:*

- (a) *to ensure the height of buildings are appropriate for their location,*
- (b) *to permit building heights that encourage high quality urban form.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum height proposed is 13.745m as measured from the existing ground level, resulting in a maximum numerical breach of 5.7%.

Strict compliance with the building height limit is not appropriate or necessary in this instance as the development responds directly to the desired architectural outcome for the site, particularly in relation to the establishment of an integrated and unified complex. The buildings are distinguished not from each other but rather from the broader precinct as a whole. In addition, the height of the Trampoline Centre cannot be modified – doing so would negate compliance with the FIG Apparatus Norms standards, which provide no flexibility in their application. The proposal provides a built form response that is specific to the site, existing development and specific industry construction standards, rather than the arbitrary application of the building height standard.

We note that the height remains compatible and appropriate in scale to building forms in the locality. Existing development comprises the Glendale Early Education Centre which is located at 4 Stockland Drive, Glendale (east) (on the subject site). Stockland Glendale Shopping Centre is located at 10 Stockland Drive, south of Stockland Drive. Approval has been granted by the Joint Regional planning Panel (JRPP) for the expansion to the Stockland Glendale Shopping Centre. Further to the south of Stockland is the Sydney – Newcastle Rail corridor. The site lies to the north west of the future proposed station, bus-interchange and road / Pennant St overpass which are part of the Lake Macquarie Transport Interchange (LMTI). To the west of the subject site is land zoned B4 Mixed Use. The uses in this area include a number of light industrial and large retail premises including Hudsons Home Timber & Hardware, Safe n Sound Storage and Amart Furniture Glendale.

The subject site has successfully operated as a recreational facility for over 20 years (opening in February 1999), being one of the region's premier sporting centres. The Centre is owned by LMCC and initially comprised the Ken Booth Gymnastics Centre and the Hunter Athletic Stadium. In order to maximise the community benefit of the facility and to provide a substantial long-term business model, LMCC and HRSC are looking to expand the Centre to incorporate new facilities to maintain existing customer base and to attract new users to the Centre. The HRSC will be an example of integrating community, recreation and sporting services at a common venue. The mix of uses ensures a centre that is not labelled as a particular 'type' of facility and that it is available for the whole community.

As such, the proposed works are entirely appropriate for their location in the context of surrounding development and the site's history and future planning.

The design of the new buildings are well considered and appropriate in terms of their architectural form, being consistent with Council's intended outcome for the site. Building orientation and form, roof form, materials and finishes and placement integrate all three buildings and will present a high quality/high amenity and cohesive outcome for the site and surrounds. We submit that in view of these matters, the design provides a high-quality urban form.

The design facilitates appropriate development of the site with encroachment into the maximum permissible building height justified on the basis of a better design outcome than would be otherwise achieved. Again, the proposed built form responds to industry standards for trampoline gymnastics and Council's design requirements by presenting a multifaceted sports and community centre as one integrated form. In order to comply with the height restrictions, the trampoline centre would simply not be feasible on site. To achieve the desired continuity in architectural form of the Community Centre, while providing equivalent services as proposed, additional split-level and single storey built form would be required. It is considered that this built form would have a much larger development footprint to the detriment of the site and surrounding areas. A larger building footprint would result in substantial encroachments into areas of existing and proposed outdoor open space and facilities, car parking areas and existing development, have a more significant visual impact, and would extend substantially into the bushfire hazard area to the north and northeast. The proposed built form is thereby the preferred response.



The building will have a contemporary character with co-ordinated external materials, textures and colour schemes to complement the existing Sports Centre. The materials are annotated on the DA drawings (DA211(H) and DA212(H)).

All materials selected will be durable and low maintenance so the development does not prematurely age. This will enhance the long-term appearance of the building and ensure its positive contribution as a streetscape element. The colour scheme of the building materials compliment the surrounding character of Glendale.

The design facilitates appropriate development of the site with encroachment into the maximum permissible building height justified on the basis of a design outcome that provides a high level of amenity, continuity and adherence to industry standards. This is considered to be a positive outcome within the context of the B3 zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard through adherence to the objectives of the development standard. As demonstrated, the objectives of the standard have been achieved.

3.2 The underlying objective or the purpose of the standard is not relevant to the development

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in 1.3.1 above. Therefore, this clause is not applicable.

3.3 The underlying object or purpose would be defeated or thwarted

It must be considered whether the underlying object or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Restricting development forms via the development standard may be overly restrictive and could result in architectural outcomes that are unsuitable to the locality and existing development, of lesser or poor architectural quality and that do not meet compliance with industry standards. The proposal has not disregarded the development standard, however, looks for a level of flexibility tailored to the specific and unique development type. On balance, the proposed development provides a better outcome.

Note that the building has been 'skilfully' designed (as required in the view loss test set out in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* at 25-29) as the height does not result in any significant loss of views. A building design that complied with the height standard may have additional view impacts as a result of a more extensive building footprint and would potentially therefore result in a building design that is not of a higher quality built form.

Therefore the proposal in its current form is more appropriate to its location than a development that complies with the standard.

3.4 The development standard has been virtually abandoned or destroyed

This particular aspect is not applicable in this instance.

3.5 The zoning of the land is unreasonable or inappropriate

The final matter for consideration is whether the zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable as the zoning of the site is appropriate.

4. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

The assessment above and shown throughout the Statement of Environmental Effects demonstrates that the resultant environmental impacts of the proposal will be satisfactory. The proposal addresses the site constraints and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the submitted reports. The proposed variation to the development standard is 0.745m at most. Notwithstanding the variation, the proposed works represent a well-considered development that addresses international standards imposed by the type of development, continuity through architectural design and the relevant objectives of both the standards and the B3 Business Core zone. The proposal will maintain high levels of amenity within the development and to the surrounding context. The proposal seeks to make a positive contribution to the existing streetscape and has been architecturally designed in consideration of the existing Sports Centre and the greater locality.

There are sufficient environmental and planning grounds to justify contravening the development standard and are as follows:

- The proposed development meets the zone objectives and the height control objectives;
- The proposed development is a continuation of an existing use and will provide a significant improvement to internal and external amenity and provides additional services and facilities to new and existing users;
- The proposed development is compatible with existing buildings within the complex and within the surrounding locality.

In this case, we submit that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.

4.1.1 Setbacks

The proposal achieves setback requirements.

4.1.2 Landscaping

The development displays a compliant landscaping percentage. The proposal seeks to retain substantial mature vegetation along the northern and western boundaries. EJE Architecture and the proponents have avoided impact where feasible over native vegetation in accordance with Lake Macquarie City Council consultation, and BC Act policy.

Substantial landscaping, including screening vegetation, ground cover, garden beds, planters and feature tree planting is to be provided opposite the Stockland Drive frontage, about the childcare centre and within the car parking areas. The landscape design and philosophy is described within the Statement of Environmental Effects (SEE) and previously submitted Landscape Concept plans.

4.1.3 Orderly and Economic Development of Land

The development promotes the proper and orderly development of land as contemplated by the controls applicable to the zone, which is an object of the Act (s1.3(c)) and which it can be assumed is within the scope of the “environmental planning grounds” referred to in Clause 4.6(3)(b) of the LEP.

The development represents a use that is permissible and seeks the redevelopment of the Hunter Region Sports Centre. It is located within an area that is serviced by existing roads and other essential infrastructure. In this regard, the proposal represents the orderly and economic development of land.

4.1.4 Amenity

A high level of internal and external amenity is provided by the proposed design. The proposed buildings provide for continuity in form, roof form and materials to distinguish the buildings as a single complex within the broader precinct. The proposed development will provide an attractive and significant upgrade to the existing Centre and encourage appropriate ongoing growth in Glendale and Lake Macquarie.



The proposal enables a better environmental planning outcome as the development responds to the site setting and existing development whilst achieving a quality architectural outcome within the built form context.

4.1.5 Summary

The above demonstrates that there are sufficient environmental and planning grounds to justify the proposed contravention of the building height development standard. The additional height sought by the proposal will not result in unreasonable impacts to the physical environment, is permitted under Clause 4.6, and will not adversely impact views or visual quality of the site or the amenity of neighbours. The proposal seeks to create a development that enhances the existing use and built form of the site and will make a significant positive contribution to the streetscape and community. In this regard, there are sufficient environmental planning grounds to justify the proposal.

5. IS THE VARIATION IN THE PUBLIC INTEREST?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of LM LEP 2014 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State of Regional Significance; and
- The development submitted generally aligns with Council's Development Control Plan.

The proposed development is located within the B3 Commercial Core zone of the LEP. The objectives of the B3 zone are as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To create urban centres and public spaces that are safe, accessible, welcoming and are a central focus for the community.*
- *To provide for housing as part of mixed use developments.*
- *To strengthen the roles of Charlestown, Glendale and Morisset as regional centres.*

The redevelopment is a significant improvement to what is currently existing and provided at site. The proposed development provides for the redevelopment of an existing recreational facility which will create a world class facility within Glendale and is in keeping with the objectives of the zone.

The analysis presented in this document demonstrates that the development achieves the objectives of the height control and also objectives of the zone.

Based on the above, the variation is considered to be in the public interest.



6. PUBLIC BENEFIT OF MAINTAINING THE STANDARD?

It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed development will allow for the creation of a high-quality, world class development which provides new, regionally significant sports and community facilities, which as stated above meets the desired objectives of the standard.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from Clause 4.3 within LEP 2014 still allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.



7. IS THE VARIATION WELL FOUNDED?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the LM LEP 2014 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (Height of Building) and objectives of the B3 Business Core zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the development expectations for the surrounding area.

Based on the above, the proposed variation is considered well founded.

8. GENERAL

Clause 4.6 also states that:

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. *When this Plan was made it did not include all of these zones.*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (d) *clause 2.8, 6.1 or 6.2.*

This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development. A BASIX certificate is not required for this development. The development is not affected by clauses 5.4, 2.8, 6.1 or 6.2.



9. CONCLUSION

The proposal does not comply with the height of buildings control prescribed by Clause 4.3 of the *Lake Macquarie Local Environmental Plan 2014*. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of LEP 2014 are satisfied as the breach to the height of buildings is minor and does not create any significant adverse environmental planning impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and use of Clause 4.6 of the LM LEP 2014 to vary this development control is appropriate in this instance.

Based on the above, it is reasonable to conclude that strict compliance with the maximum building height is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application.